Five Corner Produce LLC d/b/a Cross Island Fruits *and* Local 2013, United Food and Commercial Workers, AFL–CIO. Case 29–CA–257298

July 16, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Five Corner Produce LLC d/b/a Cross Island Fruits (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Local 2013, United Food and Commercial Workers, AFL–CIO (the Union), on February 28, 2020, the General Counsel issued a complaint and notice of hearing on May 4, 2020, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 4, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on June 8, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by May 18, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and email dated May 20, 2020, advised the Respondent that unless an answer was received by May 27, 2020, the Region may file a motion for default judgment.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a domestic corporation with an office and place of business located at 246 Hempstead Ave., Lynbrook, New York (Lynbrook facility), where it has been engaged in operating a retail grocery store.

Annually, the Respondent, in the course and conduct of its business operations described above, purchased and received at its Lynbrook facility goods, products, and materials in a dollar amount that is more than de minimis from suppliers located within the State of New York, said suppliers meeting a Board direct test for the assertion of jurisdiction.

On April 15, 2020, investigative subpoena duces tecum B-1-18YNMPN was served on the Respondent's Custodian of Records by email and regular mail, requiring and directing the Respondent to produce, by April 24, 2020, certain documents relevant to the Respondent's annual gross volume of business. Since April 24, 2020, the Respondent has neither produced the documents required by the subpoena duces tecum, nor filed a Petition to Revoke the subpoena.

Under these circumstances, where the Respondent has refused to provide information relevant to the Board's jurisdictional determination, the General Counsel need only prove statutory jurisdiction in order to establish a sufficient basis for assertion of jurisdiction.[1]

Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All of its employees in all of its present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most

[1] *Continental Packaging Corp.*, 327 NLRB 400, 401 (1998), citing *Tropicana Products*, 122 NLRB 121 (1958); see also *Valentine Painting and Wallcovering,* 331 NLRB 883, 883–885 (2000), enfd. 8 F.App'x 116 (2d Cir. 2001).

recent of which was effective from April 1, 2016, through March 31, 2019.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About the following dates, the Union, in writing, requested that the Respondent bargain collectively for a successor collective-bargaining agreement with the Union as the exclusive collective-bargaining representative of the unit:

(a) November 1, 2018; and

(b) December 18, 2019.

Since about December 18, 2019, the Respondent has failed and refused to respond to the Union's requests as described above and has failed and refused to bargain a successor collective-bargaining agreement with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Five Corner Produce LLC d/b/a Cross Island Fruits, Lynbrook, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 2013, United Food and Commercial Workers, AFL–CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All of its employees in all of its present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

(b) Post at its facility in Lynbrook, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since about December 18, 2019.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 16, 2020

[2] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 2013, United Food and Commercial Workers, AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement:

> All of our employees in all of our present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

FIVE CORNER PRODUCE LLC D/B/A CROSS ISLAND FRUITS

The Board's decision can be found at www.nlrb.gov/case/29-CA-257298 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

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